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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 750/2016*, **

Communication submitted by:	R.H. (represented by counsels, Mathias Blomberg and Beatrice Rohdin)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	19 May 2016 (initial submission)
Date of adoption of decision:	10 May 2018
Subject matter:	Deportation to the Islamic Republic of Iran
Substantive issues:	Non-refoulement; prevention of torture
Procedural issue:	None
Article of the Convention:	3

1.1 The complainant is R.H., who is an ethnic Kurd and a national of the Islamic Republic of Iran residing in Sweden. He was born on 25 April 1972 in the Islamic Republic of Iran, and is represented by counsels, Mathias Blomberg and Beatrice Rohdin. He asserts that Sweden would violate his rights under article 3 the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by removing him to the Islamic Republic of Iran, where he would face persecution due to his political activities against the Iranian regime. Sweden made the declaration under article 22 of the Convention in 1986.

1.2 On 20 May 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant while the complaint was being considered.

The facts as presented by the complainant

2.1 The complainant asserts that he and his family were engaged in anti-regime activities in the Islamic Republic of Iran. Members of his family were imprisoned and persecuted because of their political views.[1] The complainant's father owned two shops in his home city of Kermanshah, where he and his family conducted their political activities.

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodriguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

[1] The complainant claims that his mother's brother was arrested and executed for anti-regime activities (date unknown).

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The complainant rented another shop in Tehran, where he was also active politically. The activities included meetings with other Kurds to discuss potential reforms in the Islamic Republic of Iran, spreading propaganda during the 2009 elections, selling merchandise to support the "Green Movement" and publicizing an opposition party in his shop. The complainant's and his family's long lasting political involvement led him to become a well-known local critic of the regime in his home city and in Tehran.

2.2 In December 2011, the complainant was arrested and held in custody in Elvin Prison for 25 days. He was questioned about his political activities and connection to the Green Movement during that time. After his release on bail, he realized that he could no longer continue his political activities and closed down his shop in Tehran. On 17 March and 8 May 2012, he received two summonses to appear before the Department for Enforcement of the Judgment and later a default judgment from the Revolutionary Court in which he was convicted in absentia to 8 years in prison for insulting the Islamic Republic and the regime's holiness and for acting as instigator and for disrupting the public's mindset.[2] These offences are punishable by imprisonment or even death.

2.3 After he received the summons, the complainant and his daughter went into hiding.[3] After the judgment was handed down from the Revolutionary Court, he became sought by the police. His father was taken to a police station several times for questioning.[4] On 22 November 2012, the complainant and his daughter left the Islamic Republic of Iran. They travelled with the assistance of smugglers to Sweden and applied for asylum immediately after arriving there on 3 December 2012.

2.4 On 5 December 2013, the Migration Agency rejected the complainant's application for asylum on the grounds that he, inter alia, hadn't made it probable that he was wanted or was at risk of being exposed by the Iranian authorities in case he had to return to the country of origin, or risked persecution or other such treatment.

2.5 On 7 January 2014, the complainant appealed against the decision of the Migration Agency to the Migration Court. During his asylum process, the complainant continued to engage in activities against the Islamic Republic of Iran in which he was critical of its political situation, its regime and Islam in general. Among other things, in February 2014 he published a book in Sweden that he had completed after leaving the Islamic Republic of Iran. The book, on crime and punishment in the Islamic Republic of Iran, contained his critical views of Islam, violence, harassments and censure operations by the Iranian regime. The content of the book was so controversial that the book's publisher did not want to put its name on the book, fearing consequences from the Iranian regime. Furthermore, the complainant was active on the Internet. In particular, the website of *Khabar 1*, an Iranian news channel, cites several articles about religion in the Islamic Republic of Iran for which the complainant and his daughter are mentioned by name, including their photographs.[5] Also, *Balatarin*, a popular website of the resistance movement against the Iranian regime, includes the complainant's name and photograph and a presentation of his book. Because of the complainant's activities on the Internet, his father and other family members have been called in for questioning by the local authorities and threatened with "consequences" if the complainant did not end his anti-regime activities.[6] The complainant also provided the Court with a certificate attesting to his membership of the Swedish branch of the Worker-Communist Party of the Islamic Republic of Iran, which is banned in the Islamic Republic of Iran because it seeks to overthrow the current regime and to establish a socialist republic in its place.

2.6 On 4 June 2014, the Migration Court rejected the complainant's appeal and found unreliable his story about his activities in the Islamic Republic of Iran. As for the complainant's reasons for asylum *sur place*, the Court found that there was no reason to

[2] The Migration Agency and the Migration Court did not question the authenticity of the documents, but found the summonses and judgment to be "of a simple nature" and that "they alone could not substantiate the complainant's asylum account, however they supplemented his account".

[3] The complainant is divorced and has custody of his daughter (born in 2002).

[4] There are no details of the dates or reasons for questioning.

[5] There is no information on the content of the articles.

[6] No further details are provided.

assume that the Iranian authorities would have special interest in the complainant, because he did not have a well-known political profile in the Islamic Republic of Iran and he could not show that his anti-regime activities in Sweden had become known to the Iranian authorities.

2.7 On 24 June 2014, the complainant appealed against the decision of the Migration Court to the Migration Court of Appeals. On 3 October 2014, the Migration Court of Appeals refused leave to appeal.

2.8 On 16 December 2014, the complainant requested the Migration Agency to stay the enforcement of the expulsion and to re-examine its previous decision due to impediments to the enforcement of the expulsion. The complainant claimed new circumstances that required even greater protection for him and his daughter, namely that the circulation of his book had been widespread, including sales in Sweden, Germany, the United States of America and Canada, and it was also available as a free download by anyone in and outside of the Islamic Republic of Iran. The President of the organization Iranian PEN Centre in Exile confirmed in a letter the book's distribution on the Internet. Also, the complainant's Facebook page, which had received support from at least 1,199 people, contained several texts and photographs critical of the Iranian regime and Islam, and about the French magazine *Charlie Hebdo*.

2.9 On 29 December 2014, the Migration Agency rejected the complainant's request because it considered that it was improbable that the complainant's activities had become known to the Iranian authorities.

2.10 On 22 January 2015, the complainant appealed against the Agency's decision to the Migration Court. By that time, he had written another book, entitled "Terror in the Islamic Republic of Iran", which was critical of Islam, Islamic history and the power used by the Iranian authorities in the name of Islam. The book was published in Sweden by a local publisher in Persian and was made available as a free download on the Internet.

2.11 On 26 January 2015, the Migration Court rejected the complainant's appeal, finding that the pleaded circumstances could not be considered as new and there were no impediments to the enforcement of the expulsion.

2.12 On 13 February 2015, the Migration Court of Appeals denied the complainant's leave to appeal.

The complaint

3. The complainant claims that he qualifies as a refugee *sur place* and, if he and his daughter were returned to the Islamic Republic of Iran, they would be arrested by the authorities and subjected to torture and other cruel, inhuman and degrading treatment due to his anti-regime activities. The complainant argues that the Swedish authorities have used old case law and outdated country information as criteria for refugee *sur place* operations, thus wrongly denying him and his daughter asylum.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 21 November 2016, the State party submitted its observations on admissibility and merits. After explaining the applicable legislation and facts of the case, the State party submits that the complainant has failed to raise the minimum level of substantiation required for the purposes of admissibility. Thus, the State party argues that the communication is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.

4.2 As for the merits of the case, the State party submits that to constitute a breach of article 3 of the Convention, the following considerations are relevant: (a) the general human rights situation in the Islamic Republic of Iran; and, in particular, (b) the personal, foreseeable and real risk of the complainant being subjected to torture, following his return there.

4.3 In relation to the general human rights situation in the Islamic Republic of Iran, the State party refers to the recent reports by the United States Department of State,[7] Freedom House,[8] Amnesty International,[9] Human Rights Watch[10] and others, and while not underestimating the legitimate concern that can be expressed regarding the human rights situation in that country, it concludes that the current situation in the Islamic Republic of Iran is such that there is no general need to protect asylum seekers from that country.

4.4 As to the complainant's claim that the Migration Court's judgment was based on old case law[11] and outdated country information, the State party submits that the Court did take the latest available country of origin information into consideration while at the same time comparing it to the circumstances in the cited case law. In its judgment, the Court said that the activities in the cited case had taken place in the Islamic Republic of Iran during a period after the 2009 elections and that no information had emerged to suggest that the circumstances were different today.

4.5 The State party draws the Committee's attention to the fact that several provisions in the Swedish Aliens Act reflect the same principles as those laid down in article 3 of the Convention. Thus, the Swedish migration authorities apply the same kind of test when considering an application for asylum under the Aliens Act as the Committee applies when examining a subsequent complaint under the Convention. With respect to the present case, the State party underlines that both the Migration Agency and the Migration Court have conducted thorough examinations of the complainant's case.

4.6 The State party recalls paragraph 9 of the Committee's general comment No. 1 (1997) on the implementation of article 3 in the context of article 22, as well as its views, whereby it has affirmed that the Committee is not an appellate quasi-judicial or administrative body and that considerable weight will be given to findings of facts made by organs of the State party concerned.

4.7 In the complaint, the complainant cites that he risks treatment in violation of the Convention owing to his political activities in opposition to the regime in the Islamic Republic of Iran. During the national asylum investigation, the complainant stated to the Migration Agency that he had been politically active before the elections in 2009. He stated that his activity had been limited to selling goods such as scarves for the Green Movement and discussing social issues with other Kurds, which he also confirmed was not illegal. He also expressly stated that he had not been a member of any political party or organization. According to his own statement, the Iranian authorities did not show any interest in him until 2011, when he was allegedly arrested and detained for 25 days. Subsequent to that, he and his family ceased their political activities. The reasons for requesting asylum that the complainant gave before the Migration Agency then escalated in his submission before the Migration Court, in which he presented new information in relevant aspects and stated, inter alia, that his shop in Tehran had been a centre for the election campaign in the area and that he had been politically active until his arrest. He further submitted documents to prove that he had been a member of the Worker-Communist Party of the Islamic Republic of Iran, despite the fact that, previously, he had stated that he had not belonged to any party. Furthermore, the complainant presented new information that he had been contacted by unknown persons by telephone at his shop and threatened to stop his political activities. This information, however, contradicted his submissions from the migration investigation, in which he had stated that he had had no problems with the authorities until his arrest. The

[7] United States Department of State, "2015 Country Reports on Human Rights Practices — Iran" (13 April 2016), available at www.refworld.org/docid/57161258c.html.

[8] Freedom House, "Freedom in the World 2016 — Iran" (7 March 2016), available at www.refworld.org/docid/56dea2f515.html.

[9] Amnesty International, "Report 2015/16 — Iran" (24 February 2016), available at www.refworld.org/docid/56d05b4bc.html.

[10] Human Rights Watch, "World Report 2016 — Iran" (27 January 2016), available at www.hrw.org/world-report/2016/country-chapters/iran.

[11] In its 4 June 2014 judgment, the Migration Court referred to its own case law from 2011, specifically its decision in the case of another *sur place* Iranian asylum seeker, in which it had found that if regime critics who applied for asylum lacked a political profile, it was improbable that they would catch the attention of the Iranian authorities upon their return to Islamic Republic of Iran.

Migration Court therefore concluded that the complainant's reasons for asylum had escalated during the process, that his statements had been contradictory and partly vague and lacking in detail, and thus were not reliable and could not constitute grounds to grant him and his daughter residence permits.

4.8 The State party further refutes the complainant's claim that he qualifies as a refugee *sur place*. According to the Office of the United Nations High Commissioner for Refugees, in paragraph 96 of its Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees:[12]

> A person may become a refugee *sur place* as a result of his own actions, such as associating with refugees already recognized, or expressing his political views in his country of residence. Whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances. Regard should be had in particular to whether such actions may have come to the notice of the authorities of the person's country of origin and how they are likely to be viewed by those authorities.

By the complainant's own estimation, as testified during the proceedings in the Migration Court, 300 copies of his book on crime and punishment in the Islamic Republic of Iran had been published in Sweden, and it was available for purchase in a bookshop in Stockholm. Based on the complainant's submission, the Migration Court concluded that it was unlikely that the material in the book had reached a large number of people and that the complainant had not plausibly demonstrated that the book had come to the attention of the Iranian authorities. The Migration Court further concluded that, even if the book and the online articles had come to the attention of the Iranian authorities, the scale of the *sur place* activities had been relatively limited and there was no reason to assume that the Iranian authorities would show any particular interest in them, particularly as nothing had emerged to suggest that the complainant was a well-known political figure in the Islamic Republic of Iran. The State party emphasizes that, in cases like this, it is of utmost importance to first consider the scale of the asylum seeker's political engagement before assessing the plausibility or risk that his or her actions *sur place* would attract the attention of the national authorities upon the asylum seeker's return. Only after these initial factors have been assessed can the question of whether there is a real risk of persecution upon return to the country of origin be determined.

4.9 The State party refers to the report from the Home Office of the United Kingdom of Great Britain and Northern Ireland, which states that decision makers must be satisfied that persons claiming to be journalists or bloggers are able to demonstrate that their activities have brought or will bring them to the adverse attention of the Iranian authorities. Decision makers should give consideration to all relevant factors, including in particular the subject matter of the material in question, the language and tone used, the method of communication, the reach of the publication — i.e. how many people are they communicating with — the publicity attracted, the frequency of such publications and any past adverse interest by the authorities. Due to the vast number of Iranians in exile who take part in protests and online activities, Iranian authorities cannot monitor all of their online activities. They are therefore compelled to focus on those whose activities are extensive and go beyond expressing regular criticism, and those who are in organized opposition to the regime and present a real and serious threat to the regime.[13]

4.10 As regards the letter from the organization Iranian PEN Centre in Exile, which was submitted to the Migration Agency, the State party submits that it contained only general information and seemed to be based on information provided by the complainant himself. It alone cannot establish the extent to which the complainant has expressed himself critically against the Iranian regime on the Internet or the extent to which his book has been spread.

[12] Available at www.unhcr.org/4d93528a9.pdf.

[13] See "Country Information and Guidance – Iran: Journalists and Bloggers" (9 October 2014), para. 16, available at www.refworld.org/docid/54365e5e4.html.

4.11 The State party emphasizes that the complainant has not held any leading position within the political opposition or in any anti-regime organization in the Islamic Republic of Iran. Furthermore, he has not held any other kind of high-profile political position that, in conjunction with political activities in the Islamic Republic of Iran or abroad, could constitute a risk of persecution upon return. He has not been well known in the Islamic Republic of Iran and has not suffered any interference or persecution from the authorities after his alleged detention in 2011. His activities in Sweden can furthermore not be regard as extensive or as constituting a threat to the Iranian regime. Thus, the State party holds that there is nothing to support the complainant's claim that the Iranian regime will take action against him upon return because of his past activities in the Islamic Republic of Iran or his cited *sur place* activities in Sweden.

Complainant's comments on the State party's observations

5.1 In his submission dated 1 April 2017, the complainant disputed the State party's assertion that his communication was manifestly unfounded.

5.2 The complainant argues that, in its submission on the merits of the case, the State party used outdated reports regarding the general human rights situation in the Islamic Republic of Iran today. Referencing a more recent report of the United States Department of State,[14] the complainant submits that prosecutors in the Islamic Republic of Iran frequently use *moharebeh* (enmity towards or waging war against God) as a criminal charge against political dissidents and journalists, accusing them of struggling against the precepts of Islam and against the State, which upholds those precepts. The Government has often charged political dissidents with vague crimes, such as "anti-revolutionary behavior", "corruption on Earth", "siding with global arrogance", "*moharebeh*" and "crimes against Islam". Plainclothes officials have often seized journalists and activists without warning, and government officials have refused to acknowledge their custody of them or to provide information on them. There have been credible reports that security forces and prison personnel have tortured and abused detainees and prisoners. Acts of judicially sanctioned corporal punishment, including flogging, blinding and amputation, have been defended by the Government as "punishment" not torture. The complainant argues that, although the information above does not in itself suffice to establish that the general human rights situation in the Islamic Republic of Iran is such that his expulsion would be in breach of article 3 of the Convention, it has great importance in assessing his personal risk of being subjected to treatment contrary to the article.

5.3 As for the personal risk of being subjected to treatment in breach of article 3 of the Convention, the complainant submits that it is above all his *sur place* activity in Sweden, and not the events that occurred previously in the Islamic Republic of Iran, that constitutes the clearest and most prominent danger for him. However, those events are also relevant, as they demonstrate the complainant's former political activity and harassment, which has an impact on the assessment of the risk he faces if returned to the Islamic Republic of Iran. The complainant submitted documents, including the written summonses and default judgment of the Revolutionary Court, which the Swedish Migration Agency and Migration Court decided were of low value and "of a simple nature",[15] thereby implying that they were not taken into consideration at all.

5.4 The complainant refers to the Swedish Migration Agency's own policy document for determining *sur place* activities, which states that an applicant can be noticed by the Iranian authorities if: (a) he has pronounced opinions criticizing the Iranian regime in his own name through media or the Internet, which can be spread in Sweden and/or the Islamic Republic of Iran; (b) there is concrete information, such as a judgment or a summons, that suggests that the applicant would be of particular interest to the Iranian authorities; or (c) the person has taken a prominent political position designed to criticize the regime. If an applicant can plausibly demonstrate that his or her regime-criticizing views have been noticed by the Iranian authorities, or can be noticed by them, he or she shall be granted a

[14] United States Department of State, "2016 country report on human rights practices — Iran" (3 March 2017), available at www.state.gov/j/drl/rls/hrrpt/2016/nea/265496.htm.

[15] See footnote 2.

residence permit.[16] The complainant submits that he has never claimed to hold a leading political position or any other similar profile in the Islamic Republic of Iran, which led the State party to conclude that his activities could not be regarded as extensive or constituting a threat to the Iranian regime. However, the above-mentioned criteria for *sur place* activities does not require the complainant to hold a leading political position or similar, as long as the other two criteria are fulfilled.

5.5 The complainant submits that a simple Internet search for his name or that of his daughter brings up several pictures of him and his daughter and websites offering a download of the complainant's book, as well as his interviews and articles. The complainant claims that his book has been downloaded several times and handed out by the public in the Islamic Republic of Iran. His Facebook page has received support from at least 1,199 people and contains several texts and photographs critical of the Iranian regime and Islam. Iranian government organizations, including the Basij "cybercouncil", the cyberpolice and cyberarmy, which are presumed to be controlled by the Islamic Revolutionary Guard Corps, monitor, identify and counter alleged cyberthreats to the national security of the Islamic Republic of Iran. In particular, those organizations target citizens' activities on social networking websites that are officially banned by the committee in charge of determining offensive content, such as Facebook, Twitter, YouTube and Flickr, and reportedly harass those who criticize the Government or raise sensitive social problems.

5.6 The complainant refers to a report of the organization Freedom House[17] that states that the Iranian authorities have increased their monitoring of social media and technical attacks against opposition voices. In a report on illegal exit from the Islamic Republic of Iran,[18] the United Kingdom Home Office notes that passengers entering the country are checked against two watch lists issued by the Ministry of Intelligence and Security and the Revolutionary Guard. Those flagged are either arrested on the spot, allowed to pass through and surveilled while in the country, or have their passports confiscated and enter the Islamic Republic of Iran on the condition that they attend interrogation sessions at Ministry offices. The complainant makes reference to another report by the Canadian Immigration and Refugee Board[19] that states that rejected asylum seekers returning to the Islamic Republic of Iran are questioned, regardless of whether they have been politically active in the Islamic Republic of Iran or abroad, and are placed in detention for several days until the police have verified that they had not engaged in any political activities, after which they are released. The complainant concludes that it is evident from those reports that the Iranian regime has massive and effective surveillance mechanisms to identify individuals criticizing the regime and its values. Since the complainant has been involved in criticizing that normally arouses the regime's interest and will have a rejected asylum application when he arrives in the Islamic Republic of Iran, he will be checked and questioned by the authorities. The summonses and the default judgment will most likely show up by a search of his identity and by a single Internet search the authorities will be able to find his Facebook page with his critical views of the regime and Islam, as well as his books and his interviews.

State party's additional observations

6. In a note verbale dated 15 August 2017, the State party noted that the complainant's comments did not include any new submissions in substance that had not already been covered by its observations of 21 November 2016, and emphasized that it maintained its position regarding the admissibility and merits of the complaint.

[16] See Swedish Migration Agency (*Rättsligt ställningstagande angående den individuella prövningen av individer tillhörande, minoriteter och andra grupper i Iran samt flyktingskap sur place för individer ur denna grupp. RCI 16/2012, 27/06/2012*).

[17] Available from https://freedomhouse.org/report/freedom-net/freedom-net-2016.

[18] Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/565828/CIG-Iran-Illegal-Exit-v4-July-2016.pdf.

[19] Available at www.justice.gov/sites/default/files/pages/attachments/2015/12/07/irn105089.e.pdf.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the present case, the State party concedes that the complainants have exhausted all available domestic remedies and does not contest the admissibility of the complaint.

7.3 The Committee considers that the complaint raises substantive issues under article 3 of the Convention and that those issues should be examined on the merits. As the Committee finds no obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

8.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all the information made available to it by the parties.

8.2 The issue before the Committee is whether the removal of the complainant to the Islamic Republic of Iran would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to the Islamic Republic of Iran. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consisten. pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the Committee will assess "substantial grounds" and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in the event of his or her deportation. Indications of personal risk may include, but they are not limited to: (a) the complainant's ethnic background; (b) the political affiliation or political activities of the complainant and/or his or her family members; (c) the existence of an arrest warrant without any guarantee of a fair treatment and trial; (d) the fact that the complainant has been sentenced in absentia. With respect to the merits of a communication submitted under article 22 of the Convention, the burden of proof shall be upon the author of the communication, who must present an arguable case — i.e. to submit circumstantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real.[20] The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such

[20] See *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.4.

findings, as it can make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.[21]

8.5 The Committee notes that the State party itself has recognized the legitimate concern that can be expressed regarding the human rights situation in the Islamic Republic of Iran. The Committee recalls that, in her most recent report (A/HRC/34/65), dated 17 March 2017, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran shows that the legislation of the Islamic Republic of Iran continues to authorize punishments such as flogging, blinding, amputation and stoning of individuals convicted of certain offences.[22] The report stresses that the Government rejects the notion that amputations and floggings amount to torture and maintains that they are effective deterrents to criminal activity.[23]

8.6 The Committee takes note of the State party's submission that the complainant has not held any leading position within the political opposition or in any anti-regime organization in the Islamic Republic of Iran. It also notes the State party's argument that due to the vast number of Iranians in exile who take part in protests and online activities, Iranian authorities cannot monitor all of their online activities. However, it also observes that recent reports and its own jurisprudence show that low-level opposition is also closely monitored in the Islamic Republic of Iran.[24] Those reports also indicate that the Government continues to sentence individuals for the legitimate exercise of their rights to free expression and opinion.[25] The Committee notes that the authenticity of the court judgment or the summons that was received by the complainant were never questioned by the State party. Since the complainant has already been convicted in the Islamic Republic of Iran in absentia and sentenced to 8 years in prison for insulting the Islamic Republic and the regime's holiness, and for acting as instigator and for disrupting the public's mindset, the Committee assumes that the complainant is currently wanted by the Iranian authorities for his 2012 conviction and will be detained upon arrival to the Islamic Republic of Iran.

8.7 In assessing the risk of torture in the present case, the Committee notes the complainant's claim that: (a) he is of Kurdish ethnic minority;[26] (b) he took part in political activities in the Islamic Republic of Iran first as part of the Green Movement, and later as a member of the Worker-Communist Party of the Islamic Republic of Iran, and has a history of family members being persecuted and executed for their political views; (c) he was arrested and later convicted in absentia for his political activities; (d) he left the Islamic Republic of Iran illegally after his conviction; and (e) he had openly voiced his views against the current regime and State religion in the Islamic Republic of Iran through his books, which are still freely available for download on the Internet, and social media posts, which is prohibited and punished by law and in practice by the Iranian authorities, including by types of punishment that constitute torture.

8.8 In the light of all those circumstances, including the general human rights situation in the Islamic Republic of Iran, the personal situation of the complainant, who continues his active engagement in political activities against the Iranian regime abroad, his prior conviction and the Committee's jurisprudence,[27] the Committee is of the opinion that the

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[21] See general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 50.

[22] In para. 84 of the report, the Special Rapporteur claims that the Iranian authorities charge political dissidents and journalists with *moharebeh*, which can be punished with death, crucifixion, amputation or banishment.

[23] Ibid., para. 29.

[24] Ibid., paras. 51–52. See also, *Abed Azizi v. Switzerland* (CAT/C/53/D/492/2012), para. 8.6, and *K.N., F.W. and S.N. v. Switzerland* (CAT/C/52/D/481/2011), para. 7.7.

[25] Ibid., para. 51.

[26] According to the Special Rapporteur, violations of the rights of ethnic minorities continue to be reported in the country. Kurdish political prisoners are said to represent almost half of the total number of political prisoners in the country. Almost one fifth of the executions carried out in Iran in 2016 concerned Kurdish prisoners. See A/HRC/34/65, para. 79.

[27] See, inter alia, *Azizi v. Switzerland*, para. 8.8; *Tahmuresi v. Switzerland* (CAT/C/53/D/489/2012), para. 7.7; and *Amini v. Denmark* (CAT/C/45/D/339/2008), para. 9.8.

complainant could well have attracted the attention of the Iranian authorities. The Committee considers that the complainant's books critical of the current regime and of Islam in general compound the risk that he will be detained if he is returned to his country of origin. In the light of those considerations, taken as a whole, the Committee is of the view that, in the particular circumstances of the present case, there are substantial grounds for believing that the complainant would risk being subjected to torture if he were returned to the Islamic Republic of Iran. Moreover, the Committee notes that, since the Islamic Republic of Iran is not a party to the Convention, in the event of a violation of the complainant's Convention rights in that State, he would be deprived of the legal option of recourse to the Committee for protection of any kind.

9. The Committee against Torture, acting under article 22 (7) of the Convention, concludes that the deportation of the complainant to the Islamic Republic of Iran would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. The Committee is of the view that the State party has an obligation to refrain from forcibly returning the complainant to the Islamic Republic of Iran or to any other country where he runs a real risk of being expelled or returned to the Islamic Republic of Iran. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the present decision.